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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,527	03/29/2004	Fred Naval Desai	8768MD2	1921

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/811,527	Applicant(s) DESAI ET AL.	
	Examiner MELANIE J. HAND	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-45 and 47-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37, 39, 40, 43, 47, 48 and 52 is/are rejected.
- 7) ☒ Claim(s) 38, 41, 42, 44, 45, 49-51 and 53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/8/10 (2)</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The request to correct the inventorship of this nonprovisional application under 37 CFR 1.48(a) is deficient because: inventor Donald Roe, according to the replacement oath filed January 13, 2010, is no longer an inventor. As Mr. Roe signed the original oath as an inventor, Mr. Roe is considered herein to be a deleted inventor for the purposes of 37 C.F.R. 1.48(a) (2) and his signature is required for the petition filed January 13, 2010.

Response to Arguments

2. Applicant's arguments, see Remarks, filed January 8, 2010, with respect to the rejection(s) of claim(s) 37-45 and 47-53 under 35 U.S.C. 102 as anticipated by Desai have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art references.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 37-45 and 47-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jitoe et al (U.S. Patent No. 5,766,212) in view of Komamura et al (U.S. Patent No. 5,892,033).

With respect to **claim 37**: Jitoe discloses an absorbent article, the absorbent article comprising an elastic component, the elastic component comprising a first substrate having an ink composition applied directly via a printing method in a predetermined geometric pattern 19 that is a floral pattern, i.e. combinations of ellipses and ovals, such that the ink composition partially penetrates the first substrate, as is the nature of the printing method.

Jitoe does not disclose an elastomeric composition comprising a phase change solvent. Komamura discloses a solid phase change ink/metal chelating dye for use with nonwoven substrates such as the backsheet of the Jitoe article onto which the ink disclosed by Jitoe is printed. Komamura discloses that the composition is an ink but also comprises a heat-durable plastic (i.e. thermoplastic) polyamide support material blended with the ink material, wherein thermoplastic polyamide is an elastomeric material. The dye also comprises a phase change solvent having a difunctional aromatic moiety, e.g. bisphenol A, wherein the phase change solvents disclosed by Komamura meet the limitations of claim 37 regarding chemical structure of the phase change solvent. The phase change solvent has a phase change temperature of 60 deg. C, which meets the limitation "in a temperature range from 40 °C to about 250 °C." Komamura discloses that this dye has an improved image fastness with regard to light, heat, moisture and chemical fatigue. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Jitoe by using the ink disclosed by Komamura for the geometric indicator pattern to provide an ink that withstands heat, light, moisture and chemical fatigue to retain its usefulness as an indicator. The article of Jitoe as modified by Komamura thus renders the limitations "having an elastomeric composition applied either directly or indirectly via a printing method in a predetermined geometric pattern", "said pattern comprising at least two individual elastomeric members differing in a property selected as differing width dimensions between the elastomeric members" and "the elastomeric composition partially penetrates the first substrate" unpatentable.

With respect to **claim 39**: The elastic component of the article of Jitoe modified to contain the elastomeric ink composition of Komamura is a waist member located in the front waist region 6. ('212, Fig. 1)

With respect to **claim 40**: The predetermined geometric pattern is a continuous pattern 19. ('212, Fig. 1)

With respect to **claim 43**: The elastomeric members, e.g. a petal on a flower and the stem, at least partially overlap each other.

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With respect to **claim 47**: The substrate disclosed by Jitoe is the backsheet, which is a nonwoven fibrous web. Jitoe does not disclose an elastic component comprising this substrate. Komamura discloses an elastomeric dye composition. The motivation to modify the article of Jitoe so as to use the elastomeric ink composition disclosed by Komamura on the backsheet is stated *supra* with respect to claim 37.

With respect to **claim 48**: The fibers of the nonwoven fibrous web backsheet disclosed by Jitoe comprise a polyolefin material.

With respect to **claim 52**: Jitoe does not disclose a specific printing method. Komamura discloses that the elastomeric dye composition is specifically intended for use in ink jet processes.

Allowable Subject Matter

6. Claims 38, 41, 42, 44, 45, 49, 50, 51 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Indicating Allowable Subject Matter

7. The following is a statement of reasons for the indication of allowable subject matter:

- a. With respect to claim 38, Jitoe does not disclose or suggest an elastic component. Jitoe as modified by Komamura meets the limitation of an elastic component comprising a first substrate having an elastomeric composition applied directly by a printing method, however neither Jitoe nor Komamura discloses or suggests any percent set for any materials disclosed. Thus Jitoe would not be motivated to first modify the article of Jitoe so as to use the dye disclosed by Komamura, then further modify the resulting article such that the elastic component, i.e. the composite of the dye applied to the substrate, has a specific percent set within the claimed range.
- b. With respect to claim 41. Jitoe does not disclose any dimensions for the elements of the flowers in pattern 19, and Komamura does not remedy this deficiency.

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Thus one of ordinary skill in the art would not be motivated to specifically choose a width dimension within the claimed range for the elastomeric members, i.e. components of the floral pattern formed by the elastomeric dye composition.

c. With respect to claim 42, Jitoe does not disclose any dimensions for the elements of the flowers in pattern 19, and Komamura does not remedy this deficiency.

Thus one of ordinary skill in the art would not be motivated to specifically choose a thickness dimension within the claimed range for the elastomeric members, i.e. components of the floral pattern formed by the elastomeric dye composition.

d. With respect to claim 44, Jitoe does not disclose or suggest an elastic component. The article of Jitoe as modified by Komamura meets the limitation of an elastic component, however that elastic component only comprises one elastomeric composition, i.e. the dye disclosed by Komamura. As neither Jitoe nor Komamura discloses or suggests any additional elastomeric compositions, one of ordinary skill in the art would not be motivated to modify the article of Jitoe first to comprise an elastomeric component having the single composition therein, and then further modify the resulting article so as to comprise an elastic component that comprises at least one additional elastomeric composition disposed on the substrate.

e. With respect to claim 45, Jitoe does not disclose or suggest an elastic component. The article of Jitoe as modified by Komamura meets the limitation of an elastic component, however that elastic component only comprises one elastomeric composition, i.e. the dye disclosed by Komamura. As neither Jitoe nor Komamura discloses or suggests any additional elastomeric compositions, one of ordinary skill in the art would not be motivated to modify the article of Jitoe first to comprise an elastomeric component having the single composition therein, and then further modify

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the resulting article so as to comprise an elastic component that comprises a second elastomeric composition disposed on the substrate and then further modify that article such that the second composition is disposed on the substrate in a pattern different than the first composition.

f. With respect to claim 49, Jitoe does not disclose or suggest an elastic component. The article of Jitoe as modified by Komamura meets the limitation of an elastic component. However, neither Jitoe nor Komamura discloses or suggests an elastic component that has been incrementally stretched. Thus one of ordinary skill in the art would not be motivated to first modify the article of Jitoe so as to comprise an elastic component having the elastomeric composition disclosed by Komamura therein and then further modify the resulting article such that the elastic component has been incrementally stretched.

g. With respect to claim 50, Jitoe does not disclose or suggest an elastic component. The article of Jitoe as modified by Komamura meets the limitation of an elastic component. However, neither Jitoe nor Komamura discloses or suggests an elastic component comprising a second substrate. Thus one of ordinary skill in the art would not be motivated to modify the article of Jitoe so as to comprise an elastic component having the elastomeric composition disclosed by Komamura therein, and then further modify the resulting article such that the elastic component comprises a second substrate joined to the first substrate to form a laminate, wherein the elastomeric composition is disposed between the first and second substrates. Claim 51 depends from claim 50 and is thus also drawn to allowable subject matter and objected to herein.

h. With respect to claim 53, Jitoe does not disclose an elastomeric member. The article of Jitoe as modified by Komamura meets the limitation of an elastomeric member.

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Komamura discloses that the melt viscosity of the dye (elastomeric composition of the elastomeric member) is 40 cps or less (0.04 Pa-sec), which does not fall within the claimed range, and Komamura does not disclose an elasticity for said elastomeric composition or member. It is the examiner's position that one of ordinary skill in the art would not be motivated to modify the article of Jitoe as modified by Komamura so as to specifically have a new melt viscosity and elasticity that falls within the claimed range.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761